

**HB 109: Sex Offender Accountability Act**  
**Prepared by the Department of Justice**

EXHIBIT 2  
DATE 1/21/2011  
HB 281

**Background**

Montana's Sexual or Violent Offender Registration Act is designed to protect the public by requiring offenders to register with local law enforcement agencies in the jurisdiction where they reside. Information about these offenders is then made available to the public through an online registry. The law for sex offenders has been in place since 1989 and for violent offenders since 1995.

HB 109 amends the current provisions of Montana law governing sex offender registration and notification in order to comply with the minimum standards set forth by the Adam Walsh Act, Sex Offender Registration and Notification Act (SORNA) that was passed by Congress in summer 2006.

These provisions will bring Montana into compliance with the national standards under SORNA.<sup>1</sup>

**Overview**

HB 109 accomplishes the following:

- [46-23-502] Expand definition of "sexual offense" to include:
  - [SECTION 1(9)(a)]—Ritual abuse of minor (45-5-627(1)(a)); and
  - [SECTION 1(9)(b)]—Those convicted of a sex offense in a foreign country.<sup>2</sup>
- [46-23-502] Amend Sex Offender Tier Levels

Currently, Montana registers sex offenders using a three-tier classification system. Offenders are designated as a level I, II, or III based upon the **risk** they pose for committing future offenses.<sup>3</sup> National standards require a three-tier classification system that is based upon the **offense** committed.

To comply with SORNA, Montana needs to change from a risk-based system to an offense-based system. HB 109 proposes the following changes:

  - [SECTION 1 (12)(a) and (b)]—**Tier I**

An individual convicted of any of the following offenses would require a tier I classification:

    - **Unlawful Restraint** (45-5-301), victim under 18 and offender is not a parent;
    - **Indecent Exposure** (45-5-504(1)(2)(c)), victim under 18 and offender is 18 years or older; or offender is convicted of third or subsequent charge;
    - **Sexual Abuse of Children** (45-5-625(1)(e)), possession of child pornography.
  - [SECTION 1 (13)(a) and (b)]—**Tier II**

An individual convicted of any of the following offenses would require a Tier II classification:

    - **Sexual Assault** (45-5-502(3)), victim is under 16 and offender is 3 or more years older;
    - **Incest** (45-5-507(1)), victim is under 18 and offender is 18 or older;
    - **Prostitution** (45-5-601), victim is under 18 and offender is 18 or older;
    - **Promoting Prostitution** (45-5-602), victim is under 18 and offender is 18 or older;
    - **Aggravated Promotion of Prostitution** (45-5-603(1)(b)), victim is under 18;
    - **Sexual Abuse of Children** (45-5-625 expect subsection (1)(e), see Tier I above).

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<sup>1</sup> Under the U.S. Department of Justice, the Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office administers the standards for sex offender registration and provides assistance to states in implementing the minimum standards set forth by the Adam Walsh Act, SORNA.

<sup>2</sup> The United States Department of State concludes whether a sex offense conviction in a foreign country is permissible for registration.

<sup>3</sup> Currently, the Department of Corrections or the sentencing court assigns offenders a tier level based upon the risk each offender poses for committing similar offenses in the future. An offender's criminal history, a psycho-sexual evaluation, and the offense committed are all taken into consideration when determining a tier level.

- Level 1 Sexual Offenders – the risk of a repeat sexual offense is low
- Level 2 Sexual Offenders – the risk of a repeat sexual offense is moderate
- Level 3 Sexual Offenders – the risk of a repeat sexual offense is high, there is a threat to public safety, and an evaluator believes the offender is a sexually violent predator.

➤ **[SECTION 1 (14)(a) and (b)]—Tier III**

An individual convicted of any of the following offenses would require a Tier III classification:

- **Kidnapping** (45-5-302), if crime was committed for offender's sexual gratification and victim is under 18 and offender is not the parent;
- **Aggravated Kidnapping** (45-5-303), if crime was committed for offender's sexual gratification and victim is under 18 and offender is not the parent;
- **Sexual Intercourse without consent** (45-5-503);
- **Incest** (45-5-507(4)), victim is under 16 and offender is 3 or more years older;
- **Incest** (45-5-507(5)), victim is under 13 and offender is 18 or older;
- **Prostitution** (45-5-601 (3)), victim is under 13 and offender is 18 or older;
- **Promoting Prostitution** (45-5-602(3)), victim is under 13 and offender is 18 or older;
- **Aggravated Promotion of Prostitution** (45-5-603(2)(c)), victim is under 13 and offender is 18 or older;
- **Ritual Abuse of a Minor** (45-5-627(1)(a)).

• **[46-23-502] Change Duration of Registration (*PROPOSED AMENDMENT*)**

- **[SECTION 2 (3)(b)]**—Allows Tier I offenders to petition a court to be relieved of the duty to register after 15 years (present law is set at 10 years).

• **[46-23-502] Inclusion of Retroactivity Clause**

The proposed amendments will apply to any sex offender sentenced by a state, tribal or federal court on or after July 1, 1989 that is:

- In custody or under the supervision of the Department of Corrections;
- Under the supervision of any county, state, or federal agency;
- Already registered as a sex offender; or
- Reentering the criminal justice system due to a new felony offense (*PROPOSED AMENDMENT*).

• **[46-23-504] DNA Samples (*PROPOSED AMENDMENT*)**

- **[SECTION (3)]**—Sex offenders must submit a DNA sample

• **[46-23-508] Dissemination of Information (*PROPOSED AMENDMENT*)**

- **[SECTION (1)(b)(iii)(H)]**—Sex offender employer address available on public website
- **[SECTION (1)(b)(iii)(I)]**—Sex offender school address available on public website

### **Fiscal Impact**

Jurisdictions that are not in compliance with SORNA will suffer a 10% reduction in Byrne JAG funds for every year of non-compliance.

Byrne JAG funds received by the state in 2010 totaled \$1,563,677. Non-compliance would result in the state losing approximately \$156,377 or more in the coming years.

### **Advantages of HB 109**

- Incorporates a more comprehensive group of sex offenders and sex offenses for which registration is required.
- Provides a uniform and consistent classification system for both Montana and the United States.<sup>4</sup> This is particularly important when sex offenders relocate to a new jurisdiction.
- Allows the state of Montana to be in compliance with the SORNA.

### **Summary**

These changes will implement the minimum national standards required under SORNA and provide communities with greater protection from sex offenders living in and moving to Montana.

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<sup>4</sup> Currently, there are six jurisdictions that are in compliance with SORNA. States: South Dakota, Ohio, Delaware, and Florida. Federally recognized tribes: Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes and Bands of the Yakama Nation.